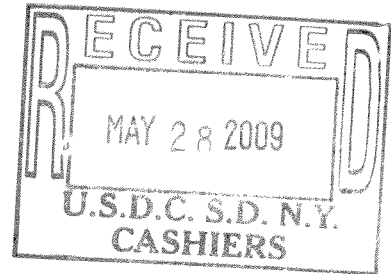


09 CIV 4996

JUDGE SCHEINDLIN

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X

STERLING JEWELERS INC.,

Plaintiff,

v.

Civ. No.

GOLDSTAR JEWELLERY LLC,

**COMPLAINT**

Defendant.

----- X

Plaintiff, Sterling Jewelers Inc. ("Sterling"), by and through its attorneys, for its complaint alleges the following against defendant GoldStar Jewellery LLC ("Gold Star"):

**NATURE OF THIS ACTION**

1. This action for damages and injunctive relief arises from the unauthorized copying, reproduction, distribution, and sale by Gold Star of multiple copies of two copyrighted jewelry designs exclusively licensed to Sterling (collectively, the "Copyrighted Designs").

2. The Copyrighted Designs were created by the actress and artist Jane Seymour as works-for-hire for Catfish Productions, Inc. ("Catfish"), which, as the owner of the

designs, granted Sterling the exclusive license to manufacture, distribute, sell, advertise and promote jewelry based on those and other designs created by Ms. Seymour (and owned by Catfish) in the United States. Pursuant to the licenses, Sterling has been marketing and selling the Open Hearts by Jane Seymour<sup>TM</sup> (“Open Hearts by Jane Seymour”) jewelry collection, including the Copyrighted Designs, since April 2008. Since its introduction, the Open Hearts by Jane Seymour jewelry collection has become one of the most popular and best-selling jewelry lines in the United States.

3. On information and belief, Gold Star, deliberately trading off the success of the “Open Hearts by Jane Seymour” jewelry collection, has intentionally copied, reproduced, distributed, and sold unauthorized copies of the Copyrighted Designs (“Gold Star Copies”) to jewelry retailers, in violation of Sterling’s exclusive rights under the Copyright Act, 17 U.S.C. §§ 101 *et seq.*

### **PARTIES**

4. Plaintiff Sterling is a corporation organized under the laws of Delaware, with its principal place of business at 375 Ghent Road, Akron, Ohio 44333. Sterling is a leading specialty jewelry retailer that distributes, sells, markets and advertises high-quality jewelry products throughout the United States.

5. Upon information and belief, Gold Star is a limited liability company organized under the laws of New York, with its principal place of business at 20 West 37th Street, New York, New York 10018. Upon further information and belief, Gold Star is a jewelry manufacturer and importer.

### **JURISDICTION AND VENUE**

6. This is a civil action seeking damages and injunctive relief for copyright infringement under the Copyright Act, 17 U.S.C. §§ 101 *et seq.*

7. This Court has jurisdiction over the subject matter of this action pursuant to 17 U.S.C. §§ 101 *et seq.* and 28 U.S.C. §§ 1331 and 1338(a).

8. Upon information and belief, this Court has personal jurisdiction over Gold Star because Gold Star does business in the state of New York and in this District. In addition, Gold Star's conduct, which constitutes copyright infringement, occurred in this District and has caused harm in this District.

9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(a).

### **ALLEGATIONS**

#### **Sterling's Jewelry Business**

10. Sterling is one of the largest specialty retail jewelry companies in the United States. Sterling's sales exceeded \$2.5 billion for the fiscal year ending January 31, 2009.

11. Sterling or its predecessors have provided retail jewelry services under the Kay Jewelers® ("Kay") brand since 1916, the Jared® The Galleria Of Jewelry ("Jared") brand since 1993, the Belden® Jewelers ("Belden") brand since 1910, and the J. B. Robinson® Jewelers ("JBR") brand since 1929. Under the Kay, Jared, Belden, JBR and other regional brands, Sterling operates approximately 1400 stores in all fifty states in the United States.

12. Sterling distributes and sells an extensive assortment of high-quality jewelry products, including the Copyrighted Designs that are the subject of this Complaint. Sterling closely controls the distribution and quality of its merchandise, including the

Copyrighted Designs. Sterling diligently protects its intellectual property rights in its trademarks and copyrights, including its licensed products such as the Copyrighted Designs.

13. Sterling markets its merchandise through national cable and network television advertising, in addition to national print and network radio advertising, catalogues, direct mailing, telephone marketing, point-of-sale signage, in-store displays and the Internet.

**Jane Seymour and the Development and Promotion of the Copyrighted Designs**

14. Ms. Seymour, the creator of the Copyrighted Designs, is a renowned actress, winner of Emmy and Golden Globe awards and honored as an Officer of the British Empire. Among the roles Ms. Seymour has played was “Dr. Quinn” in the television drama “Dr. Quinn, Medicine Woman,” which aired for six seasons on the CBS television network. Ms. Seymour recently starred as a celebrity contestant on the popular television show “Dancing with the Stars.”

15. Ms. Seymour also has enjoyed success as a designer and artist, particularly as a painter in watercolors and oils. She has exhibited her work in her own art gallery in Los Angeles, California, and at fine art galleries throughout the United States.

16. In early 2008, Ms. Seymour began designing jewelry items for manufacture and sale by Sterling. In April 2008, Sterling launched the “Open Hearts by Jane Seymour” line, based on several of these designs, which included the Copyrighted Designs, at Kay stores nationwide. The “Open Hearts by Jane Seymour” line is now also sold at Jared, Belden, JBR and other regional branded Sterling stores throughout the United States.

17. The design of the Copyrighted Designs is based on a painting by Ms. Seymour, which itself has been registered with the U.S. Copyright Office as Registration VAu-756-640.

18. Since the launch of the “Open Hearts by Jane Seymour” jewelry line in April 2008, Sterling has invested, and continues to invest, substantial sums of money in developing, reproducing, distributing, advertising and promoting the Copyrighted Designs and creating a successful product. To date, Sterling’s gross revenue from sales of the Copyrighted Designs has reached several million dollars.

19. The Copyright Act vests Sterling, as the exclusive licensee of the Copyrighted Designs, with the exclusive rights “(1) to reproduce the copyrighted work in copies...; (2) to prepare derivative works based upon the copyrighted work; and (3) to distribute copies ... of the copyrighted work to the public by sale....” 17 U.S.C. §§ 106(1)-(3).

20. Each of the Copyrighted Designs is an original work of authorship protected by copyright and registered with the United States Copyright Office. Open Hearts Necklace (Silver & Diamonds) and (Gold & Diamonds) is registered under VA 1-651-345 and Open Hearts Necklace (Silver) is registered under VA 1-651-346. True and correct copies of the Copyright Registrations are attached as Exhibit A; true and correct copies of the photographs included in the copyright applications are attached as Exhibit B. These copyright registrations are *prima facie* evidence of ownership and validity of the copyrights and have an effective date of January 28, 2009.

#### **Gold Star’s Infringing Conduct**

21. Upon information and belief, Gold Star is a manufacturer and importer of jewelry.

22. Upon information and belief, Gold Star had recognized the great commercial success of the “Open Hearts by Jane Seymour” jewelry collection designed by Ms.

Seymour and marketed throughout the United States by Sterling through its Kay Jewelers, Jared and other retail stores.

23. Upon further information and belief, at that time, Gold Star willfully and deliberately determined to appropriate for itself as much of that commercial success as possible by copying and selling the Gold Star Copies, which are two necklaces based on and derived from the Copyrighted Designs.

24. Upon information and belief, Gold Star sold the Gold Star Copies to Ultra Stores, Inc. (“Ultra”), which then made the necklaces available for sale on its website and in its retail locations. Images of two necklaces which are clearly based on and derived from Ms. Seymour’s designs and sold by Ultra are shown in Exhibit C, attached hereto.

25. Upon information and belief, Gold Star relied closely on Ms. Seymour’s Copyrighted Designs in developing its infringing necklaces. The Gold Star Copies are derivative works of the Copyrighted Designs shown in Exhibit B and therefore infringe the copyrights on those designs.

26. Upon information and belief, in one case Gold Star went so far as to divide Ms. Seymour’s necklace design into two components and then reattached them together, in so doing changing the orientation of one component with respect to the other. In the manner just described, Gold Star created a necklace design that an ordinary observer would find substantially similar to the Copyrighted Designs.

**COUNT ONE**

**(Direct Copyright Infringement in Violation of 17 U.S.C. § 106)**

27. Paragraphs 1-26 are incorporated by reference as if set forth fully herein.

28. By copying, reproducing, and distributing the Gold Star Copies, Gold Star has infringed the copyrights in the Copyright Designs in violation of Sections 106, 501-505 of the Copyright Act, 17 U.S.C. §§ 106, 501-505.

29. The acts of Gold Star set out above have been and continue to be willful, intentional, and purposeful, in violation of Sterling's exclusive rights in the Copyrighted Designs.

30. As a direct and proximate result of infringement of copyright committed by Gold Star and its violation of Sterling's exclusive rights, Sterling is entitled to injunctive relief and damages. Unless enjoined by this Court, the conduct of Gold Star will continue, and will continue to cause substantial harm to Sterling.

**PRAYER FOR RELIEF**

**WHEREFORE**, Sterling prays:

31. That this Court enter an order pursuant to Section 502 of the Copyright Act declaring that the actions of Gold Star complained of herein constitute copyright infringement, and granting injunctive relief enjoining Gold Star and any individual in the employ or control of either of them, from further copying, reproducing, or distributing the Copyrighted Designs;

32. That this Court require Gold Star to file with the Court and serve upon Sterling a report in writing, under oath, setting forth in detail the manner and form in which it has complied with the terms of any injunction entered;

33. That this Court, at the election of plaintiff, grant it statutory damages against Gold Star for willfully committing infringement as provided by Section 504 of the Copyright Act;

34. That this Court grant plaintiff costs and attorney's fees as provided by Section 505 of the Copyright Act; and

35. That this Court grant such other and further relief as it deems just and proper.

Dated: New York, New York  
May 28, 2009

WEIL, GOTSHAL & MANGES LLP

By: \_\_\_\_\_

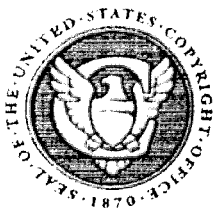
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*Attorneys for Plaintiff  
Sterling Jewelers Inc.*



# EXHIBIT A

## Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Marybeth Peters*

Register of Copyrights, United States of America

Registration Number:

VA 1-651-345

Effective date of  
registration:

January 28, 2009

Title \_\_\_\_\_

Title of Work: Open Hearts Necklace (Silver & Diamonds) and (Gold & Diamonds)

Completion/ Publication \_\_\_\_\_

Year of Completion: 2008

Date of 1st Publication: April 23, 2008

Nation of 1st Publication: United States

Author \_\_\_\_\_

■ Author: Catfish Productions, Inc.

Author Created: Jewelry design

Domiciled in: United States

Copyright claimant \_\_\_\_\_

Copyright Claimant: Catfish Productions, Inc.

c/o Palmer & Associates, LLC, 24800 Pacific Coast Highway, Malibu, CA  
90265, United States

Rights and Permissions \_\_\_\_\_

Organization Name: Greenberg Glusker Fields Claman &

Name: Machtinger LLP  
Jesse Salvar

Email: jsaivar@ggfirm.com

Telephone: 310-553-3610

Address: 1900 Avenue of the Stars, 21st Floor

Los Angeles, CA 90067 United States

Certification \_\_\_\_\_

Name: Laura J. Protzmann

Date: January 27, 2009

Correspondence: Yes

## Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Marybeth Peters*

Register of Copyrights, United States of America

Registration Number:

VA 1-651-346

Effective date of  
registration:

January 28, 2009

Title \_\_\_\_\_

Title of Work: Open Hearts Necklace (Silver)

Completion/ Publication \_\_\_\_\_

Year of Completion: 2008

Date of 1st Publication: April 23, 2008

Nation of 1st Publication: United States

Author \_\_\_\_\_

■ Author: Catfish Productions, Inc.

Author Created: Jewelry design

Domiciled in: United States

Copyright claimant \_\_\_\_\_

Copyright Claimant: Catfish Productions, Inc.

c/o Palmer & Associates, LLC, 24800 Pacific Coast Highway, Malibu, CA  
90265, United States

Rights and Permissions \_\_\_\_\_

Organization Name: Greenberg Glusker Fields Claman &

Name: Machtinger LLP  
Jesse Saiivar

Email: jsaiivar@ggfirm.com

Telephone: 310-553-3610

Address: 1900 Avenue of the Stars, 21st Floor

Los Angeles, CA 90067 United States

Certification \_\_\_\_\_

Name: Laura J. Protzmann

Date: January 27, 2009

# EXHIBIT B



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Mon 01/19/2009 , 01:50 PM



72048106\_cc2.fp  
Mon 01/19/2009, 12:55 PM



172046308\_cc2.jp  
Mon 01/19/2009 , 12:55 PM

# EXHIBIT C



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